

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 091

June 26, 1958

ALLOCATION: SALES AGENT

Syllabus:

Corporate sales representative held not to be an agent of taxpayer on the facts.

Taxpayer is a foreign corporation engaged in the lumber manufacturing business. Its home offices are outside the state; however, its mill is located in California. Prior to 1943 X Sales Co., a nonprofit foreign corporation, acted as distributors of taxpayer's products as well as several other lumber companies. Taxpayer owned less than 50% of the stock.

In late 1942 and 1943 taxpayer acquired a 50% ownership of X Sales Co., the other 50% being owned by A Co. In 1948 X Sales Co. merged with another company, the surviving corporation being known as Y Lumber Co. Taxpayer and A Co. then entered into an agreement with Y Lumber Co. whereby the latter would act as sales agent for them. Under the agreement Y Lumber Co. would only receive reimbursement for its expenses from the stockholders, thereby acquiring no net income resulting from its activities. In 1951 taxpayer purchased the 50% interest of A Co., and Y Lumber Co. became a wholly owned subsidiary of taxpayer. Taxpayer claims that the selling activities of Y Lumber Co. were those of an "agent" and that solicitation by the "agent" outside California should be recognized in the sales factor of taxpayer's allocation formula. Advice is requested as to whether the selling corporation was an agent for the purposes of sales allocation.

Regulation 23040(b) recognizes that a corporation may act as an agent. If a true agency relationship exists between corporations, the agent's selling activities are attributable to its principal. However, where a taxpayer creates a corporation to handle a particular function or segment of the former's business, the relationship between the two stemming from stock ownership alone is not sufficient to establish an agency relationship.

In the present case the separate identity of Y Lumber Co. has been preserved for many years. It had its own employees, district sales offices, and always had the right to render services for companies other than its stockholders. The agreement in 1948 did not curtail its independent status. Under that agreement it had complete discretion in determining the market price at which the lumber of its stockholders would be sold. The agreement made no provision for acceptance by the stockholders a condition precedent to the sales it solicited. Credit and collections were exclusively under its control. All these

factors are characteristic of an independent status rather than a principal-agent relationship. It is concluded that the selling corporation was not an agent within the meaning of Regulation 23040(b).

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